

December 31, 2003

Honorable Christopher Hall, Senate Chair  
Honorable Lawrence Bliss, House Chair  
Joint Standing Committee on Utilities and Energy  
115 State House Station  
Augusta, ME 04333

Re: Report on the feasibility of requiring transmission and distribution utilities to transfer the administration of contracts associated with prior conservation efforts to the Commission

Dear Senator Hall and Representative Bliss:

Section 8 of P.L. 2001 ch. 624 requires the Public Utilities Commission to report to the Utilities and Energy Committee on the feasibility of our agency assuming responsibility for administering contracts for energy efficiency services entered into by electric utilities prior to the restructuring of the industry. We have not yet concluded our analysis of some of the complicated legal and structural issues posed by this question and cannot advise you on the feasibility of our assuming responsibility for the contracts until additional questions are resolved.

We are providing this interim report to describe actions we have taken to comply with the Legislature's directive to examine the feasibility of requiring the transfer of contracts associated with prior conservation efforts to the Commission.

**Background:** The Conservation Act (the Act) enacted in 2002 (P.L. 2001, ch. 624), transferred authority to develop conservation programs from the State Planning Office (SPO) and the authority to implement the programs from the T&D utilities to the Commission. The Act was an attempt to remedy an ineffective arrangement for the administration of efficiency programs left over from electric industry restructuring which created a three-way split in the responsibility for the administration of those programs. Industry restructuring directed responsibility for program planning to the SPO, responsibility for implementation remained with the State's restructured electric companies, and responsibility for overall oversight resided with the Commission. The legislature and most stakeholders were dissatisfied with this structure after two years of experience, and attempted to resolve the problems through the Conservation Act. Under the new Act, the Commission must establish objectives and an overall energy

strategy for conservation programs (i.e. a plan), and implement programs consistent with those goals and objectives.

The Act did not resolve all structural issues regarding efficiency programs. Prior to industry restructuring, some utilities entered into contracts for periods of up to 20 years with energy service companies to install conservation measures for the benefit of utility customers<sup>1</sup>. In its development of the Act, the Legislature addressed transition issues that might arise in the shift to Commission-sponsored conservation programs. The expenses associated with “prior conservation efforts,” or programs that utilities sponsored prior to March 1, 2002, are included as a cost of the overall State-wide program effort implemented by the Commission. 35-A M.R.S.A. § 3211-A(1)(E) and (4). The Act also provides that,

[e]xcept as otherwise directed by the Commission, transmission and distribution utilities shall continue to administer contracts associated with prior conservation efforts. Such contracts may not be renewed, extended or otherwise modified by transmission and distribution utilities in a manner that results in any increased expenditures associated with those contracts.

35-A M.R.S.A. § 3211-A(7).

In the Conservation Act, the Legislature addressed the issue of contract administration by directing the Commission to examine the feasibility of assuming administration of the contracts.

The Public Utilities Commission shall examine the feasibility of requiring transmission and distribution utilities to transfer the administration of contracts associated with prior conservation efforts to the commission. The commission shall report its findings and recommendations to the joint standing committee of the legislature having jurisdiction over utilities and energy matters no later than January 1, 2004. The joint standing committee of the legislature having jurisdiction over utilities and energy matters may report out legislation to the 121st Legislature relating to the administration of contracts associated with prior conservation efforts.

Section 8. 35-A M.R.S.A. §3211.

**Actions Taken to Date:** In response to the Legislature’s directive, we issued a Notice of Investigation on August 5, 2003, “Investigation of the Administration of T&D Contracts Associated with Prior Conservation Efforts,” Docket No. 2003-544. An initial case conference was held on September 4, 2003 at the Commission offices, and

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<sup>1</sup> Though not individually approved by the Commission, these contracts were entered into subject to Commission review.

discovery on the questions of contract administration was conducted. Information gathered thus far in our investigation is summarized below.

- Only two of Maine's T&D utilities have pre-existing contractual obligations to pay for efficiency measures installed prior to the enactment of the Conservation Act.
- Bangor Hydro-Electric (BHE) Company has one remaining contract with an energy service company that concludes with a final payout in 2007. This contract was for the delivery of energy efficiency services to residential customers. BHE's administrative responsibilities under the contract require it to confirm individual residential customer meter data through an examination of customer accounts. This is done through the use of customized software. BHE administers the contracts through a company employee who is familiar with the contract and the software used in the billing procedure. BHE reports that this activity requires approximately 6% of the individual's time.
- Central Maine Power (CMP) Company has twenty-seven remaining Power Partners Contracts with three corporate entities and twelve Contracted Rebates direct with the end-use customers. The contracts all have different lengths, payout schedules and contractual obligations, but the last payout occurs in 2012. Unlike the BHE contract, there is no requirement under CMP's contracts to confirm individual customer meter data or accounts. CMP has assigned two employees to administer these contracts. Approximately 20% of one individual's time is spent administering the Power Partners Contracts. Time spent administering the Contracted Rebates by the second individual is reported as one hour per year. CMP has also contracted with an energy auditor to verify that measures installed under the Power Partners Contract remain in place and are operating properly.
- The individual who was formerly responsible for providing technical assistance on the Contracted Rebates and the administration of CMP's Power Partners Contracts is now employed at the Commission.
- Neither BHE nor CMP is involved in the procurement of energy for customers and but for the contracts described above, neither is significantly involved in the delivery of energy efficiency services.
- Neither company receives any financial return for contract management.
- The Commission staff has concluded that there is little or no business justification for the contract administration to remain the responsibility of delivery companies.

Rather than making a formal recommendation to the Legislature at this time, the Commission staff is in the process of attempting to negotiate the resolution of the issues by proposing that the Commission assume responsibility for contract administration.

Such an approach would resolve the remaining structural problems, clarify responsibility for overall program administration, and simplify the planning and administration of other programs. A conceptual proposal was issued to the parties to the investigation proceeding on December 17th, and discussions on the proposal will follow.

We will begin discussion with the parties as soon as possible. Through the discussions we will attempt to resolve any lingering factual and legal disputes and in so doing arrive at a negotiated resolution of the issue. If it is not possible to reach a negotiated solution, we will provide the Committee with our recommendations before the end of the session.

Sincerely,

Maine Public Utilities Commission  
Thomas L. Welch, Chairman  
Stephen L. Diamond, Commissioner  
Sharon M. Reishus, Commissioner

cc: Utilities and Energy Committee Members  
Jon Clark, Legislative Analyst